**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Commercial Mobile Radio Services | ) | WT Docket No. 09-66 |
| Market Competition | ) | |

**COMMENTS OF**
**SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation ("Sprint") submits these comments in response to the Public Notice that seeks input on the state of competition regarding commercial mobile radio services ("CMRS"), including intermodal voice and broadband competition with landline services.[1]

## I. THE COMPETITION REPORT SHOULD ADDRESS THE IMPACT OF INCUMBENT LEC PRACTICES ON WIRELESS AND INTERMODAL COMPETITION

Congress has required the Commission to prepare annually a report "review[ing] competitive market conditions with respect to" CMRS, a report that "shall include . . . an analysis of those conditions."[2] The Commission's past six competition reports have reviewed both the state of the wireless market and the state of intermodal competition between wireless and wireline carriers.[3] The inclusion of intermodal competition is both appropriate and important given that wireline and wireless services operate in the same product market.[4] As the Commission has rec-

---

1 *See* Public Notice, *Wireless Telecommunications Bureau Seeks Comments on Commercial Mobile Radio Services Market Competition,* WT Docket No. 09-66, DA 09-1070 (May 14 2009) ("Public Notice").

2 47 U.S.C. § 332(c)(1)(C).

3 The FCC first reviewed intermodal competition in its *Eighth CMRS Competition Report*, 18 FCC Rcd 14783, 14830-34 (¶¶ 101-06) (2003).

4 *See, e.g., AT&T/BellSouth Merger Order,* 22 FCC Rcd 5662, 5715 (¶ 96) (2007); *SBC/AT&T Merger Order*, 20 FCC Rcd 18290, 18341-42 (¶ 90) (2005).

ognized, intermodal competition has become an increasingly significant aspect of telecommunications.[5] Indeed, the Commission has approved several large mergers involving the nation's two largest incumbent local exchange carriers ("LECs") (*i.e.,* SBC/AT&T, Verizon/MCI, AT&T/BellSouth) under the theory that consumers would not be harmed because it expected intermodal competition to intensify.

To date, however, the Commission's competition reports have not provided "an analysis of whether or not there is effective competition"[6] between wireless and wireline carriers, or the manner in which LEC practices impact wireless competition. Rather, these reports have only focused on the status of wireless substitution.[7] Sprint respectfully submits that reports which focus only on wireless substitution fail to address greater threats to the competitive landscape. Specifically, these reports have failed to address the distortions in both the intermodal and wireless markets generated by the size and vertically integrated nature of the two largest telecommunication carriers in the United States, AT&T and Verizon. These carriers have increased incentive and opportunity to affect the competitiveness of independent wireless providers.

In the past, then-Commissioner Copps has been critical of FCC orders that failed to analyze intermodal competition – and in particular, the bottleneck control incumbent LECs exercise over the critical production inputs that wireless carriers need to provide their services.[8] It is time

---

5 *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5721 (¶ 109) ("[T]he record evidence indicates that [AT&T's and BellSouth's] current and future pricing incentives are based more on likely competition from intermodal competitors than from competitive LECs."). *See also Verizon Forbearance Order,* 22 FCC Rcd 21293, 21323 n.6 (2007); *SBC/AT&T Merger Order*, 20 FCC Rcd 18920, 18349 ¶ 103 (2005).

6 47 U.S.C. § 332(c)(1)(C).

7 *See, e.g., Thirteenth CMRS Competition Report,* WT Docket No. 08-27, DA 09-54, ¶¶ 228-32 (Jan. 16, 2009); *Eighth CMRS Competition Report,* 18 FCC Rcd 14783, 14931-34 (¶¶ 101-06) (2003).

8 *See, e.g., Cingular/AT&T Wireless Merger Order,* 19 FCC Rcd 21522, 21657-61 (2004) (Statement of Commissioner Copps Dissenting in Part); *AT&T/Dobson Merger Order,* 22 FCC Rcd 20295, 20350-51 (2007) (Statement of Commissioner Copps Dissenting in Part).

to rectify this omission because, as Sprint and others have documented in multiple proceedings, incumbent LEC pricing of these bottleneck facilities is inhibiting competition and harming consumer welfare – including the deployment of wireless broadband services.

## II. INCUMBENT LEC SPECIAL ACCESS PRICES DIRECTLY IMPACT COMPETITION – AND IN PARTICULAR, BROADBAND COMPETITION

Wireless carriers must use incumbent LECs for a variety of production inputs relative to the provision of wireless services, and the incumbents' prices for these inputs (*e.g.,* access charges, transit fees) directly affect the cost of wireless service. An analysis of the wireless market must include and assessment of the impact that incumbent LEC pricing for these bottleneck facilities has on the wireless industry. In particular, the Commission should increase its focus on special access. This is because special access is one of the core elements of wireless networks and the largest three incumbent LECs accounted for approximately 94% of the interstate special access market.[9] Indeed, "special access generated 85% of [their] reported intercarrier revenues."[10]

Acting Chairman Copps and Commissioner Adelstein have correctly observed that there is "substantial data available in this and other proceedings to indicate that the special access market is anything but competitive."[11] The material facts are not in dispute:

1. *Special access facilities are an essential input to the provision of wireless services*. A CMRS provider cannot provide its wireless services without connecting its thousands

---

9 *See* 2007 FCC ARMIS Report 43-01, Table 1, Column "Special Access."

10 Peter Bluhm with Dr. Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, No. 09-02, at 8 (Jan. 21, 2009) ("NRRI Report").

11 Joint Dissenting Statement of Commissioners Copps and Adelstein, *AT&T Broadband Forbearance Order*, 22 FCC Rcd 18705, 18742 (2007).

of cell sites to its serving mobile switching centers ("MSCs") or Internet routers.[12]

2. *Incumbent LECs have an effective monopoly in the provision of the DS1 special access facilities used by wireless carriers*. The NRRI report confirmed what the General Accountability Office ("GAO") and two FCC economists had earlier found – namely, incumbent LECs possess a virtual monopoly over the DS1 special access facilities that wireless carriers need to provide their services.[13] Specifically, NRRI found that incumbents maintain a "strongly dominant share of DS-1 business in virtually all cities," providing 96 percent of all DS1 channel terminations and 98 percent of all DS1 transport in 2007.[14] This dominance occurs because competitive alternatives are available only in "compact downtown areas"[15] – while wireless carriers must purchase facilities to cover large geographic areas, including urban, residential and rural. NRRI further observed that incumbent LECs obtained this dominant position because ratepayers funded the ubiquity of their networks during the monopoly era,[16]

---

12 *See, e.g.,* Separate Statement of Commissioner McDowell, *Second White Spaces Order*, 23 FCC Rcd 16807, (2008) ("[A]ll wireless services have to be backhauled to the PSTN and the Internet via a network of some kind."); Separate Statement of Commissioner Copps, *UNE Performance Measurements NPRM*, 16 FCC Rcd 20641, 20687 (2001) ("[A] significant portion of local competition is provided over special access circuits.").

13 NRRI Report at 84; *see also* GAO, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO 07-80, at 6 (Nov. 2006); Uri and Zimmerman, *Market Power and the Deregulation of Special Access Service by the FCC*, 13 Information & Telecommunications Law, No. 2, at 129 (2004).

14 *See* NRRI Report at 45 and Table 4. *See also id.* at 48 ("Nationally in 2007, this market had 1.18 effective firms, and ILECs provided 99 out of every 100 units of this service."). A 2007 Sprint poll of 77 CLECs revealed that only 16 of them collectively had facilities to about one percent (1%) of Sprint's cell sites. *See* Sprint Comments, WT Docket No. 08-27, at 6 (March 26, 2008).

15 *See* NRRI Report at 84. *See also id.* at 56 (Competitive alternatives are available "only in a small portion of these metropolitan areas.").

16 *See* NRRI Report at 47.

and this past investment gives incumbents "significant economies of scale and scope" that new entrants cannot possibly achieve in most areas.[17]

3. *The FCC has repeatedly observed that incumbent LECs have both the incentive and ability to overprice essential bottleneck facilities to "benefit their own CMRS subsidiaries and to protect their local exchange monopolies from wireless competition*."[18]

4. *The prices that incumbent LECs charge their competitors cannot be justified relative to the prices they charge for their own retail services*.

| Verizon Service | Monthly Price | Price per Mbps |
|---|---|---|
| Power Plan DSL | $29.99[19] | $10.00 |
| FiOS | $49.99[20] | $5.00 |
| DS1 Circuit | $390.00[21] | $260.00 |

Differences among the facilities used with these services do not begin to explain why the per megabit prices incumbent LECs impose on their competitors are 26 (or 52) times higher than those they charge to their own retail customers.

5. *Existing regulation is not working as intended because incumbent LECs charge the highest prices in the geographic areas where they are free from price regulation (un-*

---

[17] *Special Access Rates for Price Cap LECs NPRM*, 20 FCC Rcd 1994, 2004 ¶ 26 (2005).

[18] *LEC-CMRS Safeguards Order,* 12 FCC Rcd 15668, 15689 ¶ 27, 15696 ¶ 49 (1997), *aff'd GTE* v. *FCC*, 233 F.3d 341 (D.C. Cir. 2000). *See also Cingular/AT&T Wireless Merger Order,* 19 FCC Rcd 21552, 21611 ¶ 237 (2004) (ILECs have the "incentive to protect their wireline customer base from intermodal and intramodal competition.").

[19] The Power Plan has download speeds up to 3 Mbps, and upload speeds up to 768 Kbps (*see* http://www22.verizon.com/Residential/HighspeedInternet/Plans/Plans.htm).

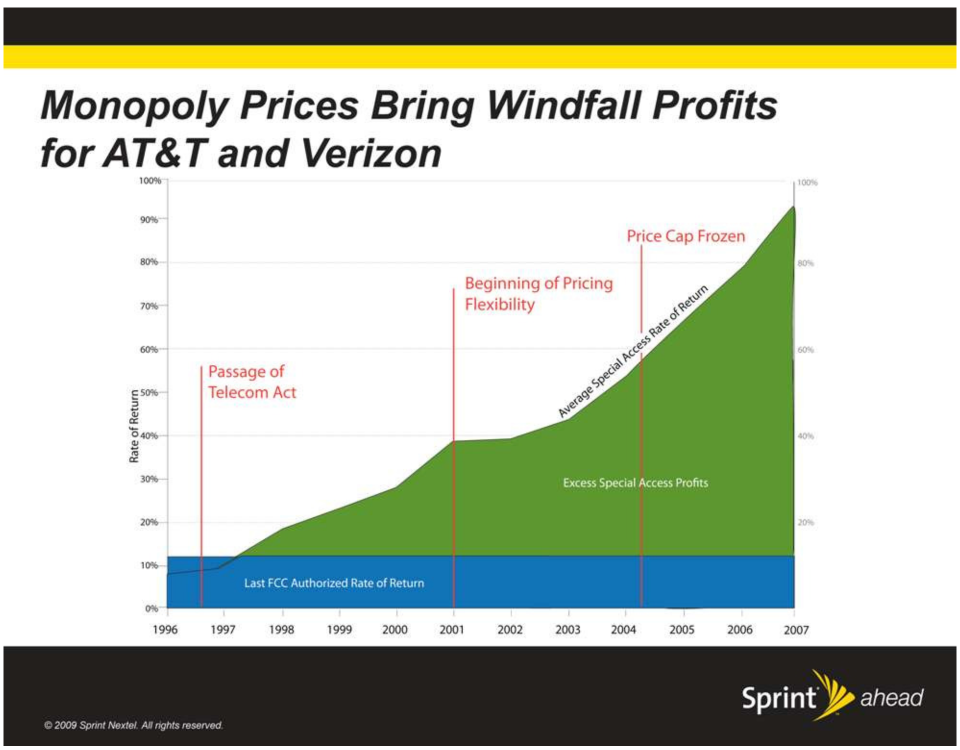
[20] The $49.99 FiOS plan offers download speeds up to 10 Mbps and upload speeds up to 2 Mbps (*see* http://www22.verizon.com/Residential/FiOSInternet/Plans/Plans.htm).

[21] This is Sprint's average price for a five-year term plan for two channel terminations and 10 miles of transport.

*der the theory that those areas supposedly are competitive)*. Finding that special access prices for channel terminations were "always *higher* in Phase II areas,"[22] the NRRI Report concluded that

> the evidence fails to support a conclusion that sellers are being restrained in Phase II areas by competition to offer lower prices. Instead, it suggests the contrary conclusion, that sellers are using market power in Phase II areas to raise prices to their large wholesale customers.[23]

6. *Monopoly pricing, not surprisingly, has resulted in obscene profits for incumbent LECs*. By 2007, the last year for which ARMIS data is available, AT&T and Verizon's over-earnings from special access grew to over $8.0 billion.




Notably, as this chart demonstrates, AT&T's and Verizon's rates of return have mushroomed as the size of the special access market increased.

---

22 NRRI Report at 70, italics in original.

23 NRRI Report at 70-71.

RBOCs have criticized this data as meaningless because, they say, ARMIS data constitutes "accounting profits" only. However, no adjustment to the data can lead to a reasonable rate of return for special access services. For example, the National Regulatory Research Institute adjusted RBOC special access profits by increasing 2007 special access investment totals so they would bear the same relationship to total investment that 2007 special access revenue bears to total 2007 regulated revenue. NRRI found that:

> Even after adjustment, however, all three [RBOCs] show earnings well above the 11.25% authorized return …. We take such high earnings as evidence that the three RBOCs continue to have market power and, AT&T and Qwest, at least, have made substantial and sustained price increases that are based on the use of market power.[24]

Incumbent LEC special access pricing is having a significant impact on the cost (and as a result, the price and availability) of wireless service – which, in turn, decreases the effectiveness of intermodal competition. Special access expense constitutes approximately one-third of Sprint's total cell site operating costs.[25] A recent study revealed that if AT&T and Verizon were to reduce their profit levels to the FCC authorized return of 11.25 percent, Sprint would realize an *annual* cost savings of $790 million (with other wireless carriers realizing proportionally similar savings).[26] Importantly, intense competition among wireless carriers would ensure that the benefits of these price reductions would be passed on to consumers (*e.g.,* through accelerated

---

24 NRRI Report at 76.

25 *See* NRRI Report at 31; Sprint Comments, WT Docket No. 08-27, at 8 (March 26, 2008).

26 Comments of Sprint Nextel Corp. in GN Docket No. 07-45, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, filed May 16, 2007, p. 13.

network expansion to areas currently underserved or more rapid deployment of new technologies or services).

Incumbent LECs, by overpricing production inputs needed by all wireless carriers, effectively establish a price floor for independent wireless carriers, who must pay cash for these bottleneck facilities.[27] This makes it more difficult for independent wireless carriers to compete as vigorously against both the incumbent's services and the incumbent's wireless affiliate.

This expanded market power is likely to have its most dramatic effect on the deployment of new broadband services, whether on 3G or 4G networks. Broadband deployment will require the purchase of large numbers of additional special access circuits. While carriers will attempt to purchase alternative backhaul circuits wherever possible, the incumbent LECs' dominance of the special access market ensures that they will continue to control the cost imposed on new broadband providers. Inflated costs for special access, in turn, will limit the number of areas in which broadband deployment will be economically feasible and will artificially increase costs to consumers.

The prices incumbent LECs are assessing for bottleneck facilities are inhibiting effective intermodal competition, for both voice and broadband services. Incumbent LEC shareholders benefit from the current environment, but consumers do not – because the wireless services available to them must be priced to recover artificially inflated costs, are available in fewer areas,

[27] Sprint assumes that AT&T and Verizon are charging their CMRS affiliates the same prices they charge independent wireless carriers, although there is a big difference between a cost accounting entry and the actual payment of cash by non-affiliates. With an integrated firm, it makes no difference whether costs and profits are booked to the ILEC or CMRS affiliate, and it makes no difference whether the affiliate is paying above-cost prices because the money is merely moving from "one pocket to the other." In fact, integrated firms benefit by overcharging all CMRS carriers for essential inputs (including their affiliates) because they can maximize their corporate profits while concurrently increasing their competitors' cost of service.

or are less robust. Sprint submits that any analysis of intermodal competition must discuss these facts.

## III. CONCLUSION

The Commission's assessment of the wireless competition must begin to acknowledge the distortions being created by the dominance of the large incumbent LECs in today's market place. Sprint is not suggesting that the Commission decide the issue of special access in this proceeding. Special access can and should be addressed expeditiously in the special access rulemaking that the Commission commenced four years ago and in which a vast and comprehensive record has already been amassed. Special access, however, is only one of the more obvious regulatory distortions affecting competition in the wireless market today. A true analysis of wireless competition should begin to address these issues.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**

*/s/ Charles W. McKee*
Charles W. McKee
Vice President, Government Affairs
Federal & State Regulatory

Norina Moy
Director, Government Affairs

**Sprint Nextel Corporation**
2001 Edmund Halley Drive
Reston, VA 20191
703-433-3786

June 15, 2009